

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.93 OF 2007

1. Nitesh Wadhvani, age 28 son of Shri)
Ashok Wadhvani Plot No.D, Sector-E,)
Sanwer Road Industrial Area, Indore)
M.P.)
2. Kishore Wadhvani son of Shri Khan)
Chand, Plot No.15-A, Sector B,)
Sanwer Road, Indore, Madhya)
Pradesh.
3. Ashok Sharma son of Shri)
Prabhudayal Choube, 38, Maalganj)
Chauraha Indore, Madhya Pradesh.) ... Petitioners

Versus

1. State of Maharashtra)
2. Dhariwal Industries Limited,)
Manikchand House 100-101, D.)
Kennedy Road, behind Hotel Le)
MERIDIAN, Pune – 411 001)
And also at
Sonawala Building, First Floor, 19,)
Bank Street, Fort, Mumbai – 400 001.) ... Respondents

Dr. Abhishek Manu Singhvi, senior counsel with Mr. Saxena, senior counsel Mr. Shirish Gupte, senior counsel and Mr. Ashok Mundargi, senior counsel and Mr. Sham Marvadi, Mr. Sanjeev Sachdeva, Mr. Ashwin Naik, Mr. Amit Bhandari, Mr. Vinod Bhagat, Mr. Hemang Engineer, Mr. Kiran Mehta i/b M/s. G.S. Hegde & V.A. Bhagat for the petitioners.

Mr. S.R. Borulkar, Public Prosecutor with Mr. M.S. Mhambray, A.P.P. for the State.

Mr. Sushil Kumar, senior counsel with Mr. Vishwajit Sawant, Mr. Hitesh Jain and Mr. Subhash Jadhav i/b ALMT Legal for respondent 2.

CORAM : SMT. RANJANA DESAI, &

D. B. BHOSALE, JJ.

**DATE ON WHICH THE JUDGMENT
RESERVED : 4TH APRIL, 2007.**

**DATE ON WHICH THE JUDGMENT
PRONOUNCED : 16TH APRIL, 2007.**

ORDER :- (Per Smt. Ranjana Desai, J.)

1. In this petition filed under Article 226 of the Constitution of India and under section 482 of the Code of Criminal Procedure (for short, "the Code"), the petitioners have, inter alia, prayed for quashing of the proceedings in MECR No.16 of 2006 registered by Azad Maidan Police Station, Mumbai, pursuant to an order dated 9/8/2006 passed by the Chief Metropolitan Magistrate, Esplanade, Mumbai in Case No.33/I&R/06 and stay of the said proceedings pending disposal of the petition.

2. Respondent 2 (for convenience, "the complainant") claims that since the year 1961, it is doing the business of supari, gutkha, tobacco, etc. under the trade mark "Manikchand". According to respondent 2, the petitioners are selling their products by adopting and using their mark "Malikchand" which is deceptively similar to the complainant's trade mark "Manikchand". The complainant has, therefore, filed Suit No.574 of 2004 in this court for an order of injunction restraining the petitioners from using the trade mark "Manikchand". The said suit is pending.

3. The petitioners have also filed Civil Suit No.8-A of 2004 in the District Court of Mandaleshwar, Madhya Pradesh (for convenience "Mandaleshwar Court") for a declaration that the complainant does not have any right to sell panmasala, gutkha, tobacco, etc. under the trade mark "Manikchand" which is deceptively similar to the mark "Malikchand" used by them and for a perpetual injunction restraining the complainant from dealing in and selling the said articles under the said mark "Manikchand". Admittedly, on 7/3/2007, the Mandaleshwar Court has partly decreed the said suit. It has declared that the complainant does not have any right to sell its product under the name and trade mark "Manikchand". It has restrained the complainant by an order of permanent injunction from selling its products under the trade mark "Manikchand". It has returned a finding that the petitioners are doing the business of panmasala, gutkha, tobacco, etc. under the trade mark "Malikchand" since 1959-60.

4. In the complaint which is sought to be quashed, it is inter alia, stated that in Suit No.574 of 2004 filed in this court, petitioners 1 and 2 have produced Assignment Deeds dated 1/5/1986, 1/4/1992 and 1/4/1996. According to the complainant, these documents are manufactured, fabricated and obtained as a result of the conspiracy between the petitioners to claim proprietorship of the trade mark "Malikchand". According to the complainant, petitioner 3 actively participated and abetted forging and fabricating Deeds of Assignment dated 1/5/1986, 1/4/1992 and interpolation of death certificate of his father late Prabhu Dayal Choube. The petitioners used these documents

to support their false claim for exclusive right to use the trade mark “Malikchand” in this court. The complainant has, therefore, prayed that the petitioners be dealt with in accordance with law for having committed offences under section 109, 120-B, 193, 196, 200, 465, 467 and 471 of the Indian Penal Code (for short, “the IPC”). On 9/8/2006, the learned Magistrate has, after hearing the complainant, referred the matter to the Azad Maidan Police Station for investigation and report under section 156(3) of the Code.

5. It could be necessary to briefly refer to the petitioners' case and take an account of the civil litigation where the issue involved, inter alia, is whose user is prior in time. The petitioners' case is that in or around 1959, one Prabhu Dayal Choube, Proprietor of Malikchand Udyog adopted the trade mark “Malikchand” in relation to supari, ayurvedic digestive pills, etc. The said Prabhu Dayal Choube vide a Deed of Assignment dated 1/5/1986 assigned his entire business in favour of his son Ashok Sharma. Ashok Sharma extensively and uninterruptedly used the said mark “Malikchand” in respect of the said goods. Deed of Assignment dated 1/5/1986 states that Prabhu Dayal Choube, the Proprietor of Malikchand Udyog is doing the business of manufacturing supari, ayurvedic products, etc. since 1959-60 under trade mark “Malikchand” and he wishes to assign his business in favour of one of his sons i.e. Ashok Sharma. Under this Deed, Prabhu Dayal Choube has assigned his business of M/s. Malikchand Udyog along with the goodwill to his son Ashok Sharma whereby Ashok Sharma has become the owner of the said business along with the goodwill and the trade mark “Malikchand”.

According to the petitioners, Ashok Sharma vide Deed of Assignment dated 1/4/1992 assigned the trade mark “Malikchand” in favour of petitioner 2 – Kishore Wadhwani, Proprietor of Tulsi Stores. Kishore Wadhwani extensively and uninterruptedly used the said mark “Malikchand” and vide Deed of Assignment dated 1/4/1996 he assigned the said trade mark “Malikchand” in favour of petitioner 1 - Nitish Wadhwani, the Proprietor of M.S.S. Food Products. Since that day, petitioner 1 has been using the said trade mark “Malikchand” extensively and uninterruptedly. Thus, the claim that the trade mark “Malikchand” has been used by the petitioners since 1959 is based on the Deeds of Assignment dated 1/5/1986, 1/4/1992 and 1/4/1996. On the basis of these documents, aforementioned Suit No.8-A of 2004 was filed by the petitioners against the complainant in the Mandaleshwar Court.

6. We find from the record that one application was filed by the petitioners under section 195 of the IPC read with section 340 of the Code in the Mandaleshwar Court praying that SHO, Mandaleshwar be directed to take action by registering FIR under section 154 of the Code against the petitioners for producing before the court false and fabricated documents as evidence. In this application, there is a reference to yet another application filed under section 195 of the IPC read with section 340 of the Code by the complainant. It appears that the complainant has filed a petition under section 340(2) of the Code in the Madhya Pradesh High Court praying that the High Court should exercise its powers under section 340 of the Code and send the application filed by the complainant under section 340 of the Code before the

Mandaleshwar Court in the form of a complaint to the Magistrate having jurisdiction to try the same for the offences under sections 193, 420 and 471 of the IPC.

7. The petitioners filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure in the Mandaleshwar Court. The Mandaleshwar Court by order dated 6/4/2004 allowed the application of the petitioners. The complainant was restrained till final disposal of the suit from using the mark "Manikchand". However, so far as the application of the complainant praying for initiating proceedings against the petitioners under section 340 of the Code is concerned, the Mandaleshwar Court observed that no order is being passed thereon and that at the time of evidence if it comes to its knowledge that the Stamp Vendor did not have the licence or has not deposited the sum at the Registrar's office, appropriate orders would be passed.

8. Being aggrieved by this order, the complainant filed an appeal in the Madhya Pradesh High Court. On 11/5/2004, the Madhya Pradesh High Court dismissed the appeal by directing the trial court to decide the suit expeditiously. The Madhya Pradesh High Court while noting the argument of the complainant that the petitioners have forged the Deeds of Assignment observed that the said documents which were relied upon by the petitioners cannot be lightly brushed aside. The Madhya Pradesh High Court, however, made it clear that the said objection has to be tried in the trial.

9. Being aggrieved by this order, the complainant filed Special Leave Petition in the Supreme Court. On 25/2/2005, the Supreme Court declined to interfere with the Madhya Pradesh High Court's order and directed the Mandaleshwar Court to follow the High Court's direction to conclude the trial expeditiously. The Supreme Court noted that the High Court felt that the wholesale condemnation of the documents produced by the petitioners as forged or got up could not be made at the interlocutory stage and the question seriously raised on behalf of the complainant has to be decided only at the trial. The Supreme Court endorsed the High Court's view and observed that it was inclined to agree with the Madhya Pradesh High Court that it was not possible for it to decide at this stage, even prima facie, whether these documents have been got up or manufactured for the purposes of this litigation. It is, therefore, clear that so far as the complainant's application for action against the petitioners for having forged documents and for having used them in the court proceedings is concerned, even as per the Supreme Court, that was to be decided by the Mandaleshwar Court at the trial. We have already noted that the Mandaleshwar Court has partly decided the petitioners' suit and restrained the complainant from selling their products under the trade mark "Manikchand". The question whether the complainants' application praying for initiation of criminal proceedings against the petitioners is decided or not will have relevance to the prayer made for quashing of the instant complaint. We shall advert to this aspect a little later.

10. Dr. Singhvi, the learned senior counsel appearing for the petitioners

submitted that admittedly the petitioners as well as the complainant have filed civil suit against each other and on several occasions, the dispute has gone upto the Supreme Court. Dr. Singhvi contended that though an attempt has been made to give the dispute a criminal flavour, it is in fact, a civil dispute and, hence, the criminal complaint must be quashed. In support of this submission, Dr. Singhvi relied on the judgments of the Supreme Court in Madhavrao Jiwajirao Scindia & Ors. vs. Sambhajirao Chandojirao Angre & Ors., (1988) 1 SCC 692; G.L. Didwania & Anr. v. Income-tax Officer & Anr. 1995 Supp. (2) SCC 724 and an unreported judgment of the Supreme Court in Thelapalli Raghavaiah v. Station House Officer & Ors. in SLP (Cri.) No.3030 of 2006 decided on 19/3/2007. Dr. Singhvi submitted that assuming that the complainant's application for initiation of proceedings against the petitioners is not decided, the remedy of the complainant is to challenge the order of the Mandaleshwar Court in appeal and not to prosecute the criminal complaint. Dr. Singhvi submitted that it is well settled that the decision of the criminal court does not bind the civil court while the decision of the civil court binds the criminal court. Inasmuch as the Mandleshwar court has decided in petitioners' favour, that decision must bind the criminal court. In support of this submission, he relied on the judgment of the Supreme Court in Shanti Kumar Panda v. Shakuntala Devi, (2004) 1 SCC 438. Dr. Singhvi contended that the grievance of the complainant that the petitioners have used forged and fabricated documents in the court proceedings has been raised by the complainant in civil suit filed in the Mandaleshwar Court.

This is reflected in the judgment of the Mandaleshwar Court as also in the judgment of the Madhya Pradesh High Court and in the judgment of the Supreme Court delivered at the interim stage and in the final judgment of the Mandaleshwar Court decreeing the petitioners' suit. Dr. Singhvi contended that it must be borne in mind that all the courts including the Supreme Court have felt that the petitioners were entitled to an interim order restraining the complainant from using the trade mark "Manikchand" despite the contention raised by the complainant that forged documents have been used by the petitioners in the court proceedings. Dr. Singhvi contended that since the complaint has a civil flavour and in view of the fact that the Mandaleshwar Court has already decreed the petitioners' suit, and the complainant's remedy is to file an appeal against the same, on well settled principles, the criminal prosecution must be stayed. In this connection, the learned counsel relied on the judgment of the Supreme Court in Tukaram Annaba Chavan & Anr. v. Machindra Yeshwant Patil & Anr. (2001) 3 SCC 33 and Commissioner of Income Tax, Bombay v. Bupen Champaklal Dalal & Anr. 2001 (3) SCC 459. Dr. Singhvi submitted that issue of forgery and fabrication is involved in the civil proceedings as well as in the criminal complaint. He submitted that in the peculiar facts and circumstances of the case, therefore, even if this court is of the view that the complaint does not deserve to be quashed and the investigation must proceed, this is a case where the petitioners must be granted protection from arrest. In this connection, the learned senior counsel relied on the judgment of the Division Bench of this court in Debashish S.

Chakravarthy & Ors. v. The State of Maharashtra & Anr. in Writ
Petition No.2136 of 2006 decided on 4/12/2006.

11. Mr. Borulkar, the learned Public Prosecutor and Mr. Sushil Kumar, the learned senior counsel for the complainant, however, submitted that the complaint, prima facie, discloses an offence and, hence, it cannot be quashed. Reliance is placed on the judgments of the Supreme Court in State of Haryana v. Bhajan Lal, 1992 SCC (Cri.) 426 and Rajesh Bajaj v. State, NCT of Delhi (1919) 3 SCC 259. Mr. Borulkar drew our attention to the report of the Asstt. State Examiner of Documents, CID, Maharashtra State and report of India Security Press, Nasik and contended that, prima facie, the documents appear to be forged and fabricated and, therefore, this court should not quash the complaint. We must note at this stage that copies of experts' opinion are also made available to the petitioners by the State.

12. Before we deal with Dr. Singhvi's contentions, it is necessary to see whether while disposing of Civil Suit No.4-A of 2004, the Mandaleshwar Court has dealt with the complainant's case that the petitioners have produced and used forged and fabricated documents in the court and, therefore, action must be taken against them.

13. We have carefully perused the said judgment. The learned judge has observed that the plaintiff/petitioner 2 – Nitesh Wadhani and Ashok Sharma have filed affidavits on 24/1/2005 under Order VIII Rule 5 of the C.P.C. and on

17/3/2005 when the suit was kept for hearing, the complainant remained absent and, hence, the suit was kept for ex parte orders. It is further observed that on the same day, affidavits of the petitioner's witnesses were submitted and the petitioners declared that their evidence was closed. It is further observed that final arguments were heard and the matter was kept on 28/3/2005. It appears that thereafter on account of several interim proceedings, the matter could not be taken up and finally it was placed before the Mandaleshwar Court on 7/3/2007. According to the Mandaleshwar Court on that day, the complainant stated that he did not want to argue further and, therefore, the Court decided the suit on the basis of the documents produced by the petitioners and on the basis of the evidence of the petitioners' witnesses. Admittedly, there was no cross-examination of the petitioners' witnesses. It appears from this judgment that the learned judge was doubtful about the assertions made by the petitioners' witnesses that Prabhu Dayal Choube started the business in the name of "Malikchand" in the year 1959-60. However, as the facts stated in the affidavits of the witnesses were not rebutted, the learned judge held that the petitioners have proved that they are doing the business under the name "Malikchand" since 1959-60. No specific issue as regards the alleged forgery of documents was framed. The issue framed was as to whether the petitioners had filed the suit on false basis and whether the complainant is eligible for special damages from the petitioners. This issue is answered by the Mandaleshwar Court by saying that no witness/evidence was produced on behalf of the complainant, at the same time the basis upon which the petitioners have filed the suit is proved by the

affidavits of examination-in-chief filed by the petitioners. The Mandaleshwar Court concluded that hence it cannot be stated that the petitioners have filed the suit on false basis. The Mandaleshwar Court has not at all discussed or considered the claim of the complainant that the petitioners have filed and used forged and fabricated documents in the court. No clear issue in that behalf was framed. Moreover, it cannot be forgotten that the petitioners' witnesses were not even cross-examined and no evidence was led by the complainant. It was argued by Dr. Singhvi that the complainant is responsible for this and, therefore, he cannot take advantage of that fact. It is argued that, at the most, the complainant can file an appeal. We are aware that we cannot examine whether the Mandaleshwar Court's judgment is legal or sustainable in law. We cannot and do not propose to do that. We also do not want to examine who is responsible for the way the suit has proceeded before the Mandaleshwar Court. We have no manner of doubt that the appeal court seized of the appeal carried from the said judgment will consider all relevant aspects. We are, however, of the considered opinion that till date, no court has applied its mind to the complainant's case that forged and fabricated documents have been used by the petitioners in court proceedings.

14. After the learned Magistrate has passed an order under section 156(3) of the Code on the instant complaint, investigation started. The documents which were in the custody of the Mandaleshwar Court and the documents from Nagrik Sahakari Bank Limited, Indore, were sent to the India Security Press, Nasik and to the Assistant State Examiner of Documents, CID,

Maharashtra State, Mumbai. The opinion dated 5/3/2007 of the Assistant State Examiner of Documents, CID, which is produced by the learned Public Prosecutor, states that writing in English marked "Ex-Q1(a)" on the death certificate shows dissimilarities indicating towards the non-identity of the writer of Ex-A1(a). The report further states that the signatures in the Devnagari script marked "Q-2" (alleged signature of Prabhu Dayal Choube) on Assignment Deed dated 1/5/1986 shows dissimilarities indicating towards the non-availability of the writer of Exs-A1 to A6 (Specimen signatures of Prabhu Dayal Dhube). It also states that Deed of Assignment dated 1/5/1986 (Q-1) and Deed of Assignment dated 1/4/1992 (Q-3) appear to have been typed on the same type writer machine.

15. Mr. Borulkar, the learned Public Prosecutor also drew our attention to the opinion of India Security Press, Nasik and pointed out that as per this opinion, Assignment Deed dated 1/5/1986 is on Non Judicial Stamp Paper of Rs.5/- and it's date of first printing is 16/2/1987. It's date of first dispatch is 4/4/1987. Mr. Borulkar pointed out that Prabha Dayal Choube is said to have died on 6/3/1987. If the first date of dispatch of this Stamp Paper is 4/4/1987 it is not understood as to how Prabhu Dayal Choube could have signed it on 6/3/1987. Mr. Borulkar contended that moreover, according to the experts' opinion, the alleged signature of Prabhu Dayal Choube on the Assignment Deed dated 1/5/1986 does not tally with the specimen signatures. The learned Public Prosecutor contended that the experts' opinion reinforces the complainant's case.

16. We do not want to express any opinion on the experts' opinion at this stage. Whether the signatures are genuine or not, whether there is any interpolation or not can only be decided when the trial is held. In fact, the Madhya Pradesh High Court and even the Supreme Court has said that this question has to be decided at the trial but that has not been done. The question is whether in such circumstances, the instant complaint can be quashed.

17. It is well settled by a catena of judgments of the Supreme Court that a criminal complaint can be quashed only if allegations made in it even if they are taken at their face value and accepted in their entirety do not constitute any offence (*Bhajanlal' scase (supra)*). We have carefully perused the complaint. We are unable to come to the conclusion that the present complaint, prima facie, does not disclose any offence. Merely because complaint refers to civil suit, it cannot be said that it has civil flavour by ignoring its criminal ingredients. In *Rajesh Bajaj' scase (supra)*, the complaint disclosed a commercial transaction. The Supreme Court held that that is hardly a reason for holding that the offence of cheating would elude from such a transaction because in fact, many acts of cheatings are committed in the course of commercial and also money transactions. In this case, after considering the averments of the complaint, we are not inclined to accept Dr. Singhvi's contention that the instant complaint has a civil flavour.

18. We shall now deal with the judgments on which Dr. Singhvi has relied upon. In *Madhavrao Scindia' case (supra)*, the dispute was between mother and son. The allegation in the complaint was that settler's son and daughter-in-law had in conspiracy with officers of the Trust created documents showing tenancy in respect of a flat which was the Trust property. During the course of hearing, the daughter-in-law conveyed to the court that she did not claim any interest in the tenancy. The Supreme Court observed that in the setting of the matter, it was not inclined to hold that the criminal case should be continued. In our opinion, the facts of the present case cannot be equated with the above facts. This judgment is therefore not applicable to the present case.

19. In *Didwania' case (supra)*, prosecution was initiated against the appellant because he had intentionally concealed his income. The Income Tax Appellate Tribunal set aside the finding of the assessing authority that the appellant had made a false statement. The Supreme Court held that the finding of the Appellate Tribunal is conclusive and the prosecution cannot be sustained. In the present case, the complainant's grievance about use of forged documents has not been examined by any court. Hence, judgment in *Didwania' case (supra)* is not applicable to it.

20. In *Thelapalli' case (supra)*, the Supreme Court was dealing with a case involving contractual obligations. The case of the complainant, inter alia, was that the accused had misappropriated the amount of the complainant by

making illegal deductions in all bills. On the facts before it the Supreme Court held that the complaint primarily made out a civil dispute relating to measurement, though an attempt had been made to give the same a criminal flavour. This judgment has also no application to the present case.

21. In Tukaram Chavan' s case (supra), the allegations against the appellant was that he got affixed bogus thumb impressions of the members of the educational institution to show that a resolution was passed to set up a new executive body. However, the matter was pending before the Asstt. Charity Commissioner, who was to decide the validity or otherwise of the change report submitted by the appellant. The Supreme Court observed that in all probability, the question whether documents were forged or not will be considered by the Asstt. Charity Commissioner. In the circumstances, the Supreme Court stayed the criminal proceedings.

22. In Bhupen Dalal' s case (supra), number of criminal cases were lodged against the respondents under the Income-tax Act, 1961. In relation to the assessment arising under the Income-tax Act, appeals were pending before one or the other authority under the Income-tax Act. The Supreme Court observed that though there is no impediment in law for the criminal proceedings to proceed even during the pendency of the proceedings under the Income-tax Act when the conclusions arrived by the Appellate Authorities have a relevance and bearing upon the conclusions to be reached in the case, necessarily one authority will have to await the decision of the other.

The Supreme Court confirmed the High Court's order staying the criminal proceedings.

23. In our opinion, ratio of the judgments of the Supreme Court in Tukaram Chavan' scase (supra) and Bhupen Dalal' scase (supra) has no application to the present case. At the cost of repetition we must state that till date no court has dealt with complainant's grievance that the petitioners have used forged and fabricated documents in the court. Mandaleshwar court has disposed of the suit without considering this aspect. The complainant's case is that the said documents have been filed in the suit pending in this court also. Against the background of the expert's opinion relied upon by the State, it is not possible for us to stay the criminal proceedings on the ground that the complainant should file an appeal against the Mandleshwar court's judgment and get the issues decided.

24. In Shanti Kumar Panda' scase (supra), the Supreme Court was dealing with proceedings against order passed by the Executive Magistrate under sections 145 and 146 of the Code. The appellant had lodged a complaint with the police pursuant to which an order was passed under section 141(1) of the Code attaching the shop. The SDM without hearing the respondent disposed of the proceedings holding that the appellant was in possession. The respondent filed a civil suit based on title. The civil judge allowed the respondent's application and restrained the appellant from interfering with the appellant's possession. In appeal, the District Judge set

aside the said order holding that unless and until , the order of the SDM is superseded by a decree of the civil court, no injunction can be granted. The High Court set aside the order of the District Judge and restored the order passed by the civil judge. The Supreme Court confirmed the High Court's order and held that the order under sections 145 and 146 of the Code is based on a summary enquiry. At the stage of final adjudication of rights, the said order would only be one out of several pieces of evidence. In this context, the Supreme Court held that a decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. It is pertinent to note that in this case, the SDM had directed the parties to get their rights decided by a civil court. There can be no dispute that in proceedings under section 145 of the Code, the Magistrate cannot decide the issue of title. It is only the civil court which can decide it. In our opinion, therefore, the observations of the Supreme Court on which reliance is placed by Dr. Singhvi must be read in the context of the facts of that case. In any event, in this case, there is no clear finding of the civil court supported by assessment of evidence led before it by both sides that the complainant's case that forged and fabricated documents are used in the court proceedings by the petitioners is not true. We are, therefore, unable to accept Dr. Singhvi's contention that the criminal proceedings must be stayed. We are of the considered opinion that the instant complaint prima facie discloses an offence. It has overwhelming criminal flavour. In any case, in *Indian Oil Corporation v. NEPC India Ltd., 2006 (6) SCC 736*, the Supreme Court has held that where civil remedy is availed of in disputes arising from breach of contract

remedy under the criminal law is also not barred. We have already referred to Rajesh Bajaj' scase (supra) where the Supreme Court has reiterated this principle. It is therefore, not possible for us to quash the criminal proceedings or stay them.

25. We have been taken through the judgment of this court in Debhashish' s case (supra) in support of the contention that since the issue of forgery is involved in civil as well as criminal proceedings if the investigation is allowed to proceed, protection be granted to the petitioners from arrest.

26. We feel that facts of Debhashish' scase (supra) cannot be equated with the facts of the present case. Here, we have on record, experts' opinion produced by the State which is against the petitioners. In the circumstances, we feel that we must leave it to the court dealing with bail application to decide whether the petitioners deserve to be released on bail, without expressing any opinion on the merits of the case. Hence, we pass the following order :

27. The petition is rejected. However, in case, the police decide to arrest the petitioners, they shall give 72 hours' notice to them. We make it clear that nothing said by us in this order should be treated as expression of opinion on the merits of the case. Needless to say that the court seized of the bail application filed by the petitioners shall deal with it independently and in accordance with law.

28. All connected criminal applications are also disposed of.

(SMT. RANJANA DESAI, J.)

(D.B. BHOSALE, J.)